

**Day of General Discussion on “Children without parental care”
Geneva, 16 September 2005**

**RECOMMENDATION FOR THE DEVELOPMENT OF
INTERNATIONAL GUIDELINES FOR THE
PROTECTION OF CHILDREN WITHOUT PARENTAL CARE**

NGO Working Group on Children Without Parental Care, Geneva

[Members of the NGO Working Group are: Defence for Children International, First Nation Child and Family Services, Friends World Committee for Consultation, International Catholic Child Bureau (BICE), International Council of Women, International Federation of Social Workers, International Federation “Terre des Hommes”, International Social Service (convenor), RAPCAN, Save the Children UK, SOS-Kinderdorf International, World Vision International. **Observers:** International Foster Care Organisation, UNICEF]

Following the Decision of the Committee on the Rights of the Child at its 37th Session in favour of the development of “UN Guidelines for the protection and alternative care of children without parental care”, the NGO Group for the CRC set up a Working Group on this question.

One of the first activities of the NGO Working Group was to set out its view of the potential purpose and scope of such Guidelines and the specific issues they might cover. We are pleased to make this “annotated outline” available to participants at the Day of Discussion as a background document which we hope will be a useful reference tool during the debates.

From the standpoint of the NGO Working Group, these Guidelines would essentially seek to ensure that, on the one hand, children do not find themselves in out-of-home care unnecessarily and, on the other, out-of-home care provided is of a type and quality that corresponds to the rights and specific needs of the child concerned. They are designed to promote, facilitate and guide the progressive implementation of the Convention on the Rights of the Child in this particular area of concern.

The non-binding Guidelines, ultimately for adoption by the United Nations General Assembly, would be addressed not only to governments but also to international bodies and organisations, civil society, professionals, voluntary organisations and the private sector to the extent that they are directly or indirectly involved with organising, providing or monitoring out-of-home care for children.

In principle, all out-of-home care situations would be covered, from informal placements with relatives through to residential care, whatever the reason for which such care is given, ordered or needed. Excluded, however, are placements ordered by a court of law pursuant to the child’s commission of an offence; these are dealt with more especially in the 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice and the 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty.

There are situations for which special standards will no doubt need to be formulated (see Part 6 below). However, the intention is to secure Guidelines that, wherever possible, would be applicable to all children being considered for, or already in, out-of-home care. This explains

why no explicit reference is made in the descriptive text to children experiencing specific problems, such as HIV/AIDS or disability, or to groups of children such as those of indigenous peoples or ethnic minorities. It should be possible to formulate the Guidelines in such a way as to ensure that due compliance with them will cater to the rights and needs of all children. This option furthermore militates against “separate” approaches to care provision, and reinforces mainstreaming, non-discrimination and non-stigmatisation efforts in the field of out-of-home care.

The NGO Working Group underscores the fact that, at its most recent (61st) session, the Commission on Human Rights “recognise[d] the need for guidelines for the protection and alternative care of children without parental care”.

We strongly encourage participants at the Day of Discussion to express, as a main component of their recommendations, full support for the need to develop such guidelines, inviting the Committee on the Rights of the Child, States, intergovernmental bodies and NGOs to co-operate to ensure their timely and appropriate development with a view to securing their approval by the UN General Assembly at the earliest opportunity.

There follows an overview of what the proposed standards might contain. It should be noted that this is an indicative rather than an exhaustive listing, and the sections into which it is divided are not intended to reflect a definitive proposal for structure.

Geneva, 30 June 2005

ANNOTATED OUTLINE OF THE PROPOSED GUIDELINES

PART 1: BASIC PRINCIPLES

The foundations on which the Guidelines would be built are principles already internationally accepted as, notably, provisions of the Convention on the Rights of the Child (CRC) and the responsibilities and obligations that they imply. These include the four general principles identified by the Committee on the Rights of the Child as non-discrimination, best interests of the child, right to survival and development, and child participation, the latter in particular being linked to the child's evolving capacities.

The approach of the Guidelines would give special prominence to four CRC-based thrusts:

- primacy of efforts to **maintaining the child with his or her parents** by providing necessary support to the latter in their care-giving role, i.e. preventing unwarranted or arbitrary separation
- ensuring the planned provision of a **range of alternative care options**, with priority to family- and community-based solutions,
- **securing permanency** for the child without undue delay through, wherever possible, reunification with the family or in an alternative stable family setting,
- **protection from abuse, neglect and exploitation** in all care settings.

The basic principles would also place emphasis on safeguarding other rights pertinent to the situation of children without parental care, ranging from access to education and health services to, for example, the right to identity and inheritance rights.

The basic principles would reaffirm the need for all concerned with child care, in both the public and private sectors and at all levels, to take full account of the Guidelines in their decisions and activities.

PART 2: PREVENTING SEPARATION

This section would set out responsibilities and criteria designed to ensure that recourse to out-of-home care is kept to a minimum. The Guidelines would seek to address three fundamental problems in this regard:

- **inadequate support** to parents: the need for multidisciplinary social services providing, *inter alia*, psycho-social support and counselling on violence prevention, and for a social security safety net to meet basic financial requirements, as well as community-based non-residential services for children with special needs;
- **unwarranted removal** from parental care: decision-making on removal should be: the responsibility of suitably qualified and trained staff; subject to judicial review; based on appropriate assessment tools; and in particular not justified solely by material poverty or effected when support could be made available to prevent the need for such removal;
- **negative societal factors**: the need to tackle in particular discrimination on the basis of ethnicity, gender, disability, HIV/AIDS status, birth out of wedlock and socio-economic marginalisation that can generate relinquishment, abandonment and/or removal of a child.

Access to information and consequent participation by children, individually or in association, would also be covered, to ensure that their voice is heard and given due consideration in any decision-making affecting them, including decisions that might result in unwanted separation.

PART 3: CONTINUUM OF CARE

In this section, the range of care options that need to be taken into account in the Guidelines would be set out. These would include informal arrangements, kinship care, foster care, *kafala*, respite care, family-like environments, residential care facilities (group homes, household-based communities, specialised units, etc.), child-headed households, transit centres, closed protective environments, etc.

The Guidelines would assist in identifying the most appropriate of these care options for the child concerned, bearing in mind the child's experience of family care to date, his or her developmental needs, and the goal of avoiding abrupt and/or frequent changes. They would reflect the fact that family- and community-based care in principle constitute a "first resort": priority should be given to supporting appropriate solutions of this nature, especially for the youngest children. Equally, however, other forms of care may well correspond best to the rights, needs, wishes and interests of an individual child at a given moment. The basic objective of the Guidelines in this regard is thus to ensure that any child's placement is made both for positive reasons and following a full case-by-case assessment.

PART 4: DETERMINATION OF THE MOST APPROPRIATE FORM OF CARE

This section would cover the decision-making process concerning a care placement: responsibilities, criteria and guiding principles for first determining the need for out-of-home care and then deciding on the most appropriate form that such care should take for the child or children concerned.

It would give guidance on meeting the need for decisions to be made in the context of individual care plans, permanency planning and the desirability of continuity of upbringing and non-separation of siblings. It would require provision for judicial review of the placement decision as well as regular review of the suitability and necessity of placements that are not intended to be permanent. It would ensure that parents or other primary caregivers are genuinely consulted, and that the child has the full and meaningful opportunity to express his or her views and preferences, through or with the support of a guardian or representative.

In addition, the decision-making process regarding the potential adoption of a child and, where applicable, placement with a view to adoption, should be covered here. Application of the present standards would, however, extend only to the moment of the granting of an adoption order, as of which time the child is considered to be in parental care.

PART 5: GENERAL STANDARDS FOR FORMAL CARE PROVISION

The essential elements of this component of the Guidelines would focus on core standards relating to the quality of all types of formal out-of-home care, i.e. care provided by authorised public or private entities or individuals. It would cover both the requirements to be made of care providers and the responsibilities of the State, in order to ensure the well-being, development and protection of each child.

This section would set standards regarding the qualifications, selection, authorisation and obligatory registration of providers, as well as minimum conditions that carers could expect in order to carry out their tasks appropriately, including on-going support and training. All

aspects of conditions of care would be covered, as would preparation for the placement and for leaving care. The Guidelines would also stipulate criteria regarding contact with parents and other family members, as well as the wider community, and respect for the child's culture and religion in the care situation. The State's responsibility for supporting, supervising and monitoring the placement, with special reference to the protection of the child from all forms of maltreatment and exploitation, would be dealt with here. Standards on issues such as records, privacy, notification of concerns or complaints, periodic review of placement and permanency planning would be set in this section.

PART 6: ADDITIONAL STANDARDS

In the proposed Guidelines, a number of important special situations with implications over and above the "core standards" in Part 5 will need to be taken into account. For the purposes of this annotated outline, they are all dealt with under this section, but could of course be broached otherwise in the final document.

Informal care: Most out-of-home care is in practice provided on an informal basis, by relatives (kinship care) or other individuals in the community. By the very fact of the "informal" nature of these care forms, requirements of carers and the role of the State will likely differ in their regard as compared to formal situations. Special standards will need to be set in consequence, while of course respecting no less the rights and needs of the children involved.

Child-headed households: these often spontaneous groupings of children who have experienced very difficult life events constitute, for many, the only perspective of stability and continuity of care. Specific standards will be needed to deal with the legal recognition and status of these households, as well as the form and quality of support and protection services they should receive.

Care provision abroad: children may be sent abroad to be cared for, temporarily or permanently, by family members, other "host families" or, less frequently, residential facilities; equally, children who are abroad for whatever reason often find themselves in need of care. This can be a complex and problematic subject, and clear guidelines are required, *inter alia*, to define responsibilities of and in the countries concerned, to reiterate care standards, and to ensure permanency planning including, where applicable, contact and reintegration with parents in the home country.

Emergency situations: provision of care in situations of conflict, post-conflict, and natural disasters, including for children in situations of displacement, is an even more complex issue. It can be expected that a wide range of specific and detailed standards will be needed in this regard. There will be special requirements relating to responsibilities, including those of the international community, foreign agencies and care providers; to authorisations; and to preparedness (including special qualifications and minimum levels of training) for roles in circumstances of this nature. Particular attention must be paid to the appropriateness of respective forms of care under these conditions (and excluding, in principle, adoption), the aims of that care, and obligations to facilitate family tracing and reintegration. Whatever the care option chosen, ensuring that there is effective protection of children from, for example, trafficking, abduction and sexual exploitation while in care takes on special importance in these situations. Clear principles regulating and limiting cross-border displacement of children will also need to be specified.

Other special standards for care options: during the drafting of the Guidelines, further needs for special standards may be identified in relation to one or other care option, that cannot be dealt with appropriately in the framework of “core standards” (under Part 5 above) or in other sections as proposed in this outline.
